IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1861 of 2001
to
FIRST APPEALNo 1866 of 2001
with
CROSS OBJECTION No. 68 of 2001
to
CROSS OBJECTION No. 73 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPL.LAQ OFFICER

Versus

DAIBEN BABULAL PATEL

Appearance:

1. First Appeal No. 1861 of 2001
Mr.R.C.Kodekar, Addl.GOVERNMENT PLEADER
for Petitioners No. 1-2
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

The State has preferred these appeals under Sec. 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) read with Sec. 96 of Civil Procedure Code, 1908 against the award made by the Assistant Judge, Mehsana in L.A.R.Nos. 3186/93 to 3190/93 and 782/96 on 24.2.00. The lands situated in the sim of village Karannagar, Taluka : Kadi, District : Mehsana were acquired under Notification under Sec. 4 of the Act which was published on 22.6.90. After following the procedure as contemplated, the Land Acquisition Officer by an order dated 9.7.91 offered Rs.3.90ps. per sq.mtr. to the claimants under Sec. 11 of the Act. The claimants made applications under Sec. 18 of the Act for determination of market value @ Rs.50/per sq.mtr. The Reference Court, on appreciation of evidence placed before it, held that the claimants are entitled to get the market price of the lands @ Rs.40.60ps. per sq.mtr. (i.e. an additional amount of Rs.36.70ps. per sq.mtr.) and other statutory benefits. It is against this common award, these appeals are preferred. The R & P is made available to this Court by the learned Counsel.

The claimants have preferred cross-objections being Cross-Objections No. 68/01 to 73/01 for seeking higher compensation interalia stating that the Reference Court has committed an error in determining the real price under Sec. 23 of the Act.

On 7.4.93, the Land Acquisition Officer made an award. He considered that the village is situated at 8 km. away from the Taluka Head Quarter. Just adjacent to the village there is Kalol-Kadi road. The village has got facilities such as High School, Primary School, Post Office, Water, Light, Cooperative Societies, Primary Health Centre etc. Over and above there is one Cooperative Housing Society. It is also stated that at this village, there are industrial units situated on Kalol-Kadi road. There is National Highway No. 8 leading to Mehsana from Ahmedabad just at a distance of 8 to 10 km. It appears that the Special Land Acquisition Officer, on the basis of instances, determined the market price as said earlier.

Sureshbhai Somabhai Patel, one of the claimants

was examined and he stated on oath that the cultivators used to take 3 crops in a year such as Mustard seeds, Castor Nuts, Cumin seeds, Millet etc. In a year on a average, they used to earn Rs.45,000 to 50,000/- per vigha. They used to spend about Rs.10,000/- towards expenses. He has pointed out about the facilities and 100 industrial units situated in the village, about the telephone facilities and the roads. In detail he has pointed out about the development of the village. He has stated in the cross-examination that he has no documentary evidence to show that they are earning Rs.45,000/- to Rs.50,000/per vigha. He has denied that on assumption, he is indicating as to what the farmers are earning. It is required to be noted that about the cultivation, even there is a reference in the award itself and hence at the most it can be said that there were no exact figures available, but at the same time it cannot be denied that thrice a year cultivators were cultivating the lands. In the instant case, there is evidence of Gandhi Ajitkumar Ratilal, discharging his duties in Narmada Nigam. He has produced certain documents with a view to indicate the price of the lands in near-about areas.

In the instant case, it is not necessary for this Court to examine the case in detail as the lands situated at village Karannagar were acquired vide another notification issued under Sec. 4 of the Act on 22.6.90. The lands situated at village Karannagar were acquired by another notification dated 15.10.99 also and it appears that 4 group of appeals were preferred in this High Court being F.A.No. 682/00 to 694/00, 1396/00 to 1418/00, 421/00 to 439/00 and 1880/00 to 1890/00 with 2688/00. The Division Bench of this Court (Coram : J.N.Bhatt & A.H.Mehta, JJ) disposed of the appeals by a common judgment on 14.9.01. The Division Bench examined the aspects in detail and pointed out as under :

" The main question which is in focus in these groups of appeals revolves around the assessment and evaluation of market value as on the date of issuance of notification under Sec. 4(1) of the Act. We have, dispassionately, examined the evidence of the witnesses of both the parties. We have, also, examined the revenue record, maps of revenue sim of village Karannagar and AUDA based maps at exh. 29 and also the documentary evidence of revenue record in the form of certificate of Talati-cum-Mantri and Sarpanch of Karannagar village and other documentary evidence relied on by the parties."

The Division Bench further held as under :

" After having taken into consideration the entire testimonial collection and the relevant reliable and comparable documentary evidence, the assessment and evaluation of the market rate made by the reference court is required to be enhanced upwardly. In our opinion, keeping in mind the design and desideratum of the provisions of section 23 of the Act and the facts and circumstances emerging from the record of the present case and the aforesaid comparable reliable documentary evidence, the appellants-claimants are found entitled to an amount of Rs.42/- per sq.mtr. instead of the amount determined by the reference Court. Therefore, the appeals covered under group 4 are required to be allowed, partly, whereas the appeals covered under group 1,2 & 3 preferred by the acquiring body and the acquisition authority are required to be dismissed."

Consequently, the Court held that the claimants are entitled to claim Rs.42/- per sq.mtr. with other statutory benefits.

In the instant case, the lands are situated at village Karannagar. Lands are agricultural lands. There is no evidence to show that the lands are inferior in quality and fertility than the lands which were already acquired. When the agricultural lands of the same village are acquired, it would be prudent for the Court to take into consideration that comparable instance. When the lands are agricultural and similar facilities are available at the village for which there is no dispute, we fail to understand as to why the claimants should not be held entitled to claim Rs.42/- per sq.mtr. as held by the Division Bench in the aforesaid appeals.

The Apex Court in case of Thakarsibhai Devjibhai and others V/s Executive Engineer and another reported in 2001 AIR SCW 2417 in para 12 has pointed out that no evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High court for reducing the compensation by Rs.10/- per sq.mtr. cannot be sustained." The lands in that case were situated at a distance of about 5 km. from Viramgam. However, the Court observed that as per the map produced, the lands are situated at about 3 km. away from it, while the

lands acquired under the award exh. 16 are at a distance of about 2 km. away from it. With regard to the question raised about the distance, the Court pointed out that "So far as the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior." In the instant case, therefore it is not possible to take a different view than taken by the Division Bench. Consequently, the appeals preferred by the State are required to be dismissed. So far as the cross-objections filed by the claimants are concerned, they are required to be allowed to a limited extent and they are entitled to claim compensation @ Rs.42/- per sq.mtr. in all and all other statutory benefits as claimants are entitled under the law.

The learned counsel submitted that the Reference Court has committed error in not awarding interest on solatium and additional amount. It is required to be stated that the statutory benefits under the law for which the claimants are entitled are required to be given. The Apex Court in case of SUNDER vs. UNION OF INDIA decided on 19/09/2001 pointed out as under:

> "We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana Vs. Smt. Kailashwati & Ors. (supra)
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> `Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of S.28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant

of interest on solatium as well.'

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence, the persons entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly."

The award shall stand modified accordingly.

The learned advocate for the claimants further submitted that the award is of year 2000 and the amount has not been deposited as the State ought to have deposited. It is directed that the State shall pay the amount of compensation within a period of 6 months. It goes without saying that 50% of the amount shall be paid within 3 months after proper verification and the remaining 50% amount shall be paid within 3 months thereafter in the same manner. No order as to cost.

(B.C.PATEL, J)

(SHARAD D DAVE, J)

srilatha